IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11265 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHENSADARA GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11265 of 2002

MR KB PUJARA for Petitioner No. 1

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1-3

MR JS YADAV for Respondent No. 4

MR DARSHAN V SHAH for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/12/2002

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the order dated 21.10.2002 (Annexure "D") passed by the State Government in the

Education Department handing over the management of the Government school at village Bhensadara in taluka Dharampur, District Valsad to respondent No. 4 and the consequential order passed by the District Education Officer at Annexure "E".

2. What emerges from the elaborate affidavit filed by the Under Secretary on behalf of the State Government in the education department is as under: -

2.1 The number of students studying in the Government schools has been declining. The percentage of students passing SSC and HSC examinations has also been considerably low. The school equipments and facilities are also not being properly maintained and the overall interest of the students and the level of education imparted to them is suffering. Hence, keeping in mind the extent of expenditure being incurred by the State Government to maintain the schools and the overall result of the students studying in such schools, the State Government has issued the Government Resolution dated 9.5.2002 for handing over the management of the such Government Secondary/Higher Secondary Schools to private institutions subject to certain safeguards.

2.2 The chart in para 6 of the affidavit gives that figures relating to the Government Secondary School at village Bhensadara. The number of students in Std. X has been going down and out of 30 to 20 students in the 10th Std., hardly 2 or 3 have passed the SSC examination. Similarly in 12th Std., the number of students has only been stagnating between 3 and 10. Merely because out of 3 students, two have passed the 12th std. examination, neither the panchayat which is objecting to the transfer nor the persons in charge of the management of school prior to the impugned transfer can flatter themselves with this percentage of pass in 12th std. at 67%.

The reply affidavit also points out that it is not that because the school is situate in a tribal area, it does not get adequate number of students. In the same tribal taluka of Dharampur, the average number of students studying in 10th and 12th standards is approximately 50 to 60. At village called Sidhumbur which is approximately 6 kms. away from the school, the average number of students studying is 55 to 60 and there is such a great demand that these institutions have to turn away students for lack of adequate seats.

2.3 The affidavit in reply points out that the safeguards introduced by the above GR are also provided

for in the instant case also.

In the first place, the management is handed over only for a period of five years and the Government will monitor the functioning of the school under the management of respondent No. 4. Every five years the functioning of the school is to be examined and if the overall performance of the school does not improve, the management of the said institution shall be taken back by the State Government.

Secondly, the property of the school vests solely in the Government and respondent No. 4 is only permitted user thereof at a token rent.

Thirdly, so far as the existing staff of the school is concerned, their service conditions are protected and the new management is not permitted to discontinue the staff without following the procedure prescribed under the Act. In case the teachers appointed by the Government do not wish to continue with the new management, they would be given an option to be transferred to other Government schools.

Fourthly, in case the new management desires to appoint new teachers, the said teachers would not be considered as permanent employees and in case the management is taken back by the State Government, the teachers appointed by the private management would not be considered as Government employees.

Thus, no injustice is done either to the teachers or to the students who are expected to benefit from the transfer of the management.

2.4 As regards the credentials of respondent No. 4, para 8 of the reply affidavit points out that it has been running various other educational institutions as mentioned in the brochure annexed to the reply affidavit.

2.5 Considering the overall need of the taluka, the depleting strength of students in the Government school and in the interest of the students and the overall upliftment of the taluka, the Government has considered it necessary to hand over the management of the Government Secondary school at village Bhensdara of Taluka Dharampur in District Valsad to respondent No. 4 after examining the credentials of respondent No. 4.

3. Respondent No. 4 has filed affidavit stating that the management of the Government Secondary school at

village Bhensdara of Taluka Dharampur in District Valsad has been handed over by the authorities to respondent No. 4 on 21.12.2002.

4. In view of the justification offered by the State Government in the reply affidavit filed on its behalf, there is no merit in this petition. The petition is, therefore, summarily dismissed. Notice is discharged with no order as to costs.

(M.S. Shah, J.)

sundar/-